In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 691

SOUTHERN FURNITURE MANUFACTURING COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 167-173) is reported at 194 F. 2d 59. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 102-157) are reported in 91 NLRB 1159.

JURISDICTION

The opinion of the court below was entered on January 31, 1952 (R. 167-173), and a petition for rehearing was denied on March 4, 1952 (R. 178). The petition for a writ of certiorari was filed on April 7, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and under Section 10 (e) and (f) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, 141 *et seq.*), are set forth in the Appendix, *infra,* pp. 9-13.

QUESTION PRESENTED

Whether an employee who filed a charge with the National Labor Relations Board, claiming that he and other similarly situated employees had been discriminatorily discharged, was acting as an agent of a union, which was not itself qualified to file a charge, or whether he was acting in his capacity as an individual.

STATEMENT

On October 19, 1949, following his discriminatory discharge on October 7, Ezeakiel Caldwell filed a charge with the Board (R. 45-48), which he later amended (R. 51-55), complaining of the discrimination which he and other workers had

suffered "because of their membership and activities on behalf of District 50, United Construction Workers of America, United Mine Workers" (R. 46). This union had not complied with the filing requirements of Section 9 (f), (g) and (h) of the Act, but Caldwell signed and filed the charge as an individual (R. 47, 53). Based on the charge filed by Caldwell as "an individual" (R. 55), the Board entertained the complaint issued by its General Counsel, rejecting petitioner's contention that the complaint should be stricken as to all employees except Caldwell (R 116).

The court below sustained the Board in its holding that the facilities of the Board had been properly invoked by the charge which Caldwell filed as an individual. The court reasoned that "employees acting individually may assert their rights before the Board without restriction" of the filing requirements of Section 9 (f), (g) and (h) (R. 169). The court observed (R. 169), as the evidence shows,[1] that "Here, Caldwell filed the charges on behalf of himself individually as well as the other similarly discharged employees, including his sister, daughter, daughter-in-law, and a number of others. The only contact which Caldwell and the other employees had had with the union prior to their discharge was the signing

[1] R. 47, 53, P.A. 96, 154, 156, 172-173, 178-179, 306, 346, 6-8, 11, 25-27, 38-39, 44-45, 58-59, 70, 78-79, 93-94, B.A. 34, 44.

of application cards on or about the day of their discharge." Petitioner introduced no evidence before the Board to substantiate its claim that Caldwell was acting as an agent of the non-complying union rather than as an individual. In its petition to this Court (p. 7), petitioner cites the testimony of Caldwell's daughter, elicited on her cross and redirect examination on an unrelated issue (P.A. 160-163), to the effect that a union representative drove Caldwell and several other discharged employees to the Board's regional office at New Orleans where they gave affidavits. The court below concluded that "There was no substantial evidence that in filing the charges Caldwell was actually 'fronting' for the union" (R. 169). It held, accordingly, that "Under such circumstances the Board properly denied the Company's motion to strike from the complaint the names of all dischargees other than Ezeakiel Caldwell" (R. 169).

ARGUMENT

Every Court of Appeals which has considered the question, including the Court of Appeals for the Sixth Circuit with whose decision petitioner claims a conflict (*National Labor Relations Board* v. *Alside, Inc.*, 192 F. 2d 678, 679), has held that Section 9 (f), (g) and (h) of the Act does not restrict the right of an employee acting as an individual to invoke the aid of the Board against

unfair labor practices. *National Labor Relations Board* v. *Augusta Chemical Co.*, 187 F. 2d 63 (C.A. 5); *National Labor Relations Board* v. *Clausen*, 188 F. 2d 439, 443-444 (C.A. 3), certiorari denied, 342 U.S. 868; *National Labor Relations Board* v. *Globe Wireless, Ltd.*, 193 F. 2d 748, 749, n. 1 (C.A. 9). Since a charge may be filed by any person (*National Labor Relations Board* v. *Indiana & Michigan Electric Company*, 318 U.S. 9, 17-18), and since the limitations of Section 9 (f), (g) and (h) are specifically confined to labor organizations, it is manifest that Congress contemplated continued access to the processes of the Board by individual employees without regard to the compliance status of their unions.

Thus, even assuming that when a discriminatorily discharged employee himself files a charge, an issue may nevertheless be raised whether he is acting as agent of a non-complying union, that issue would present only a question of fact. Accordingly, the only question which remains in this case is whether the court below correctly concluded that petitioner's contention that Caldwell was in fact acting as an agent of the non-complying union and not in his individual capacity was baseless. This factual question warrants no review. Moreover, the court below properly resolved the issue against petitioner. Himself the victim of discrimination, Caldwell filed a charge on his own behalf, for his close

relatives, and for his fellow-workers who were in the same predicament as he.[2] Except on the assumption that a person acts as an individual only if he is devoted exclusively to his own isolated interest, Caldwell's joining of others in his charge, natural in the circumstances, permits no inference that he thereby became the union's agent. This is particularly true since Caldwell was neither an officer of the union nor active in its affairs, his connection with it being limited to his signing a union application card immediately before his discharge. It is also immaterial that after his discharge a union representative drove Caldwell and several others to the Board's regional office at New Orleans where they gave affidavits to support their claim of discrimination. It is to be expected that employees may well be assisted by their unions in bringing charges before the Board. Such assistance, and any incidental benefit which a non-complying union may obtain through redress of the wrong done the employees, was undoubtedly anticipated by Congress when it left open an avenue of recourse to the Board by individual employees. To Congress, the dominant purpose of preserving a means of safeguarding employees from reprisal undoubtedly outweighed

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[2] Petitioner implies (Pet. pp. 13, 14), that Caldwell was not qualified to name other discriminatees in his charge since it was not shown that they had authorized him to act on their behalf. But the Act permits any one to file charges (*Indiana & Mich.* case, *supra*, p. 5), and contains no requirement that a person discriminated against must authorize the filing of a charge on his behalf.

any benefits a non-complying union might get as a consequence. See *National Labor Relations Board* v. *Augusta Chemical Co.,* 187 F. 2d 63, 64 (C.A. 5).

There is no conflict between the decision below and that of the Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Alside, Inc.,* 192 F. 2d 678. Both decisions subscribe to the basic premise that employees as individuals may have recourse to the Board even if their union is not in compliance, but with respect to different fact situations, merely arrive at different conclusions concerning the import of the evidence. The court below carefully pointed out the differentiating factors in the evidence in the two cases (R. 168-169). In addition, more recently, in a case which the court below believed "presented a like factual situation" to *Alside,* it followed *Alside. National Labor Relations Board* v. *Happ Brothers Company, Inc.,* 29 LRRM 2698 (C.A. 5, April 15, 1952). Accordingly, the claim of conflict is without substance.

Finally, the question presented in this case is substantially similar to that which this Court recently declined to review in *National Labor Relations Board* v. *Clausen,* 342 U.S. 868. See the Board's brief in opposition to certiorari, pp. 2, 21-23. See also pages 13-14 of the Board's brief in opposition to certiorari in *Olin Industries, Inc.* v. *National Labor Relations Board,* No. 586, this Term, certiorari denied, April 7, 1952.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, Secs. 141 *et seq.*) are as follows:

* * * * * * *

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *.

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

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Representatives and Elections

Sec. 9.

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(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made

by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of

this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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